

April 9, 1999

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT APPROVAL

SUBJECT: Department of Development and Environmental Services File No. **L97P0024**
Proposed Ordinance No. **98-703**

ALPINE MEADOWS

Application for Preliminary Plat Approval

Location: Generally located between 56th Avenue South and 57th Avenue South, along the north side of South 296th Street, and just south and adjacent to the Logan Water District parcel

**Property Owner/
Applicant:** John Goodman
401 Second Avenue South
Seattle, WA 98104

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision:	Approve, subject to conditions (modified)

PRELIMINARY MATTERS:

Application or petition submitted:	June 5, 1997
Complete application:	December 8, 1997

EXAMINER PROCEEDINGS:

Hearing Opened:	9:30 AM, December 3, 1998
Hearing Closed:	4:30 PM, February 26, 1999
Hearing Record Administratively continued to:	4:00 PM, March 5, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Drainage
- Downstream impacts
- Flooding
- Stormwater detention
- Streams
- Surface water conveyance

EXAMINER'S SUMMARY:

Proposal found to comply with applicable statute, ordinance and policy; provided, that the highest available drainage standards are applied in order to meet the RCW 58.17.110 minimum threshold for appropriate provision for drainage ways.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information.**

Owner/Developer:	John Goodman 401 Second Avenue South Seattle, WA 98104
Engineer:	Erich O. Tietze and Associates 18530 76 th Avenue West., Ste B Edmonds, WA 98026
Location:	Generally located between 56 th Avenue South and 57 th Avenue South, along the north side of South 296 th Street, and just south and adjacent to the Logan Water District parcel
STR:	SE-NW 02-211-04
Zoning:	R4
Acreage:	4.27
Number of Lots:	16
Density:	3.75 units/acre
Typical Lot Size:	Ranges from approximately 2,679 SF to 5,486 SF
Proposed Use:	Single family detached and/or single family attached housing
Sewage Disposal:	Sewer (Lakehaven Utility District)
Water Supply:	Public (Lakehaven Utility District)
Fire District:	Federal Way (#39)
School District:	Federal Way (#210)
Complete	

Application Date: December 8, 1997

2. The Applicant proposes to subdivide 4.27 acres zoned R-4 (4 residential units/acre) into 16 lots for construction of detached single family homes. As an alternative, the Applicant has also proposed either attached townhomes and/or zero lot line homes on lots 30 feet wide or greater. The proposed density is 3.75 dwelling units per acre. The lots range in size from approximately 2,679 to 5,486 square feet. Amenities on-site include recreation space with a play area, new public road/cul de sac with curb, gutters, and sidewalks plus curb frontage improvements along South 296th Street. The preliminary plat drawing is contained in this hearing record as Exhibit No. 27. In addition, it is attached to the preliminary report to the Hearing Examiner dated December 3, 1998 (Exhibit No. 1) prepared by the Department of Development and Environmental Services ("Department" or "DDES").
3. **SEPA.** On October 16, 1998, the Department issued a mitigated threshold determination of nonsignificance ("MDNS") regarding the proposed plat of Alpine Meadows. That is, the Department issued its determination that, having considered the environmental checklist and a variety of other relevant environmental documents and studies, the proposed development would not cause "probable significant adverse impacts" on the environment *provided* that certain drainage control measures were enacted, implemented and enforced. The MDNS language is contained in this hearing record on the pages 2 and 3 of the Department's preliminary report (Exhibit No. 2) and in the MDNS document itself (Exhibit No. 5).

The MDNS, based upon King County Comprehensive Plan policies NE-301 and NE-302, acknowledges that the downstream drainage contains existing problems regarding erosion and capacity. Consequently, the Department adopted stringent drainage control conditions using the 1998 Surface Water Management Drainage Manual standards. Specifically, the MDNS requires the following:

The drainage facility shall be designed using King County Runoff Time Series (KCRTS) program such that the post-development flow duration shall not exceed the pre-development flow duration for all discharges between one-half of the two-year flow and the fifty-year flow. A 10% to 20% volumetric safety factor shall be added based on the design engineer's discretion. The factor of safety shall not be less than 10%

or:

Alternatively, the facility shall be designed using the SCS-SBUH, 24-hour Storm Method described in the 1990 King County Surface Water Design Manual such that post-development two-year, ten-year, and 100-year storm flows do not exceed pre-development storm flows equaling one-half of the two-year, ten-year, and 100-year flows, respectively. A 30% volumetric safety factor shall be added to facilities meeting these criteria.

MDNS issuance complied with applicable public notice requirements. No agency, tribe, person or other entity appealed the MDNS. The minimum standards contained in that MDNS apply irrevocably to this proposal. Nonetheless, due to the concerns of downstream property owners surface/stormwater drainage comprises the principal issue of this preliminary plat review. See Findings 4.C, 5 through 8, below.

4. The Department recommends granting preliminary plat approval to the proposed plat of Alpine Meadows; subject to the 20 conditions of final plat approval stated on pages 7 through 11 of the Department's preliminary report (Exhibit No. 2); except for the Department's final amendments to its report contained in Exhibit No. 19 of this hearing record:

- A. **Recommended condition No. 3; density.** Recommended condition No. 3 establishes standards for minimum and maximum densities. The standard language, however, does not provide for the "zero lot line" option available in the zoning code. Consequently, the Department recommends this addition to standard recommended condition No. 3:

As an alternative, the Applicant has the option for townhouse development or zero lot line development. At a minimum, these lots (townhouse or zero lot line) must be designed to a minimum 30-foot lot width and 2,500 square feet in size. If the zero lot line option is selected, easements for maintenance, utilities, etc., shall be shown on the face of the final plat.

- B. **Recommended condition No. 9.F; King County Road Standards (KCRS).** Recommended condition No. 9 identifies those 1993 KCRS requirements that are applicable to this proposed development. The Department recommends a minor design refinement, also consistent with the KCRS, that would require appropriate turning radius curvature of paving at the 56th Avenue South/South 296th Street intersection:

A pavement radius is required for the 56th Avenue South connection to South 296th Street (east side). Approval from King County Department of Transportation (KCDOT) and a special use permit is required to construct this radius prior to engineering plan approval.

- C. **Recommended condition No. 8.C; drainage.** In response to neighborhood concerns, and based upon the Department's review of the evidence, the Department offers the following new recommended condition:

- (1) The detention facility for the site shall be designed using the Level 3 KCRTS methodology (as described in the 1998 King County Surface Water Design Manual); or
- (2) In lieu of designing the detention facilities using the Level 3 methodology--the methodology outlined in Condition No. 8.A can be used if the alleged diversion and flooding problems related to Tributary 0053 are corrected; or,
- (3) In lieu of designing the detention facility using the Level 3 methodology--the methodology outlined in Condition No. 8.A can be used if the Applicant makes a monetary contribution not to exceed \$1,000 per lot. The monetary contribution must be made in conjunction with a King County capital improvement drainage project. This option must be approved by King County Water and Land Resources Division (WLRD) and DDES prior to engineering plan approval.

Recommendation 8.C(3), if adopted, could be construed to contradict the MDNS. (See

Conclusion No. 1)

5. **Applicant's position.** The Applicant accepts the Department's recommendation *except* that the Applicant opposes the DDES proposed expansion of recommended Condition 8.C (described in Finding No. 4.C, above). Argues the Applicant, "Because Alpine Meadows fully complies with the requirements of the 1990 SWM and the conditions previously imposed by County staff, denial or imposition of new conditions would be improper."
6. **Drainage patterns.** The Alpine Meadows property is located a few hundred feet above the Green River Valley (or "Auburn Valley") floor. Several downstream owners of property upon that valley floor either oppose the proposed development or, instead, demand a higher level of drainage retention or redirection to protect those properties. In addition, the City of Auburn and King County Water and Land Resources Division ("WLRD") have opened negotiations intended to result in plans and improvements which address Auburn Valley flooding and the relationship with that flooding to the slopes upward and westward toward Federal Way. Presumably, the neighboring property owners also support postponement of the proposed development until those plans, requirements and/or improvements are in place. The two downstream property interests participated in this public review significantly more than others--Mara Heiman and Tom Nirschl. The surface water problems that they experience appear to have slightly different causes.

The downstream properties are directly affected by two water courses identified in this hearing record as Tributary 0045 and Tributary 0053. These tributaries drain Basins 0045 and 0053, respectively. Mr. Nirschl's property is in the 0045 basin and his problem is an overtopping problem caused by too much water in the 0045 tributary during peak storm events. The Heiman property experiences ponding, resulting from water drained predominantly from Basin 0053. Whether the Heiman property also receives water from the 0045 basin constitutes the most debated evidentiary issue of this review.

The proposed development is located within Basin 0045 and drains directly to Tributary 0045. At various locations, however, Tributary 0045 overtops its banks in various locations. At one location, in particular, neighboring property owners assert that the overtopping spreads toward and flows into the lower reaches of Tributary 0053 as it reaches the Valley floor. The Examiner continued the hearing proceedings in order to allow the Applicant's consulting drainage engineer opportunity to examine that concern and to report back to the Department about it. The additional study was sufficiently inconclusive that it required expert "interpretation." The Applicant's consulting engineer interpreted the information to suggest that all of the water in Basin 0045 probably remains in Basin 0045. That conclusion is based, principally, upon site visit observation and the placement of ping pong balls in the disputed segment of Tributary 0045 that "didn't go anywhere" on the day of that site visit.

The Department's engineering review unit and neighboring property owners reach a different conclusion. They argue that the hearing record must be interpreted to mean that there is interbasin transfer from Basin 0045 to Basin 0053. This departmental conclusion is based upon the same ping pong ball test (which was, all parties agree, "inconclusive"), testimony in evidence, and--more particularly--testimony that the drainage patterns at the mouth of 0045 and the mouth of 0053 (as they hit the Valley floor, spreading in an alluvial fan)--vary from year to year or season to season or, possibly, even more often. Thus, the neighboring property owners

and the Department each suggest that, while on the particular day that the consulting engineer visited the site no interbasin transfer occurred, the topography and evidence/testimony regarding past flow patterns strongly suggest the probability of some interbasin transfer.

7. **Drainage impacts.** As noted above, the Nirschl property sometimes floods from Tributary 0045 overtopping. On occasion, this overtopping has resulted in floodwaters passing through a legal dwelling. In response to this concern, the Applicant observes--when following the DDES recommended drainage control requirements--the added water flow from the subject property will be "paper thin". See Exhibit No. 34. The Applicant argues that this additional flood level increment will not be noticeable and therefore negligible in the regulatory scheme. The neighboring property owners disagree, arguing that *no* new increment of flood level should be acceptable.

The issue regarding the Heiman property is more complex. The solution depends upon whose interpretation of the site analysis one accepts. The Department concludes that there are probable interbasin transfers from Tributary 0045 (which conveys Alpine Meadows surface water discharges) to Tributary 0053 (within which the Heiman property is located). The Applicant argues that not only is the "paper thin" flooding increment resulting from Alpine Meadows insignificant," but also that the *rate* of discharge from the subject property will actually be less than present--thereby, presumably, dissipating potential flooding impacts. Because the rate and overtopping problem will be lessened, argues the Applicant, and because any increase in volume is spread out over a greater period of time and enters the basin *after flooding dissipates*, the existing drainage problem will not increase in magnitude, duration or frequency. This position regarding rate, duration and delay ignores the lengthy duration of soil saturation and ponding on the Heiman property. See, for instance, Exhibit No. 23. The preponderance of evidence and testimony strongly indicate that regardless of whether the Alpine Meadows discharges arrive upon the Heiman property within minutes of peak rainfall or not for several days following peak rainfall, they will exacerbate already existing saturation and ponding during the storm season.

The Applicant argues further that applying any drainage controls higher than those stated in the Department's preliminary report would violate statute regarding an "uncontested" vested right to proceed under the 1990 Surface Water Management Design Manual.

8. **Regional drainage issue.** The flooding problems experienced by the downstream property owners are regional in nature. They involve at least two jurisdictions--City of Auburn and King County. Regional solutions typically are not imposed upon individual land developers because the cost of such measures typically significantly exceeds reasonable proportionality with respect to the scope of the proposed development.
9. Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated December 3, 1998, are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the examiner's report which are submitted to the King County Council.
- 10 Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

CONCLUSIONS:

1. The third drainage alternative recommended by the Department (8.C[3]) is unacceptable because the schedule is uncertain. The Auburn/WLRD study of drainage concerns in the Alpine Meadows vicinity has not yet been funded or scheduled. It is a good idea, but, at this juncture, a speculative one. Further, the notion of some promise to pay a certain amount of money per lot at some undetermined time in the future to implement an as yet not yet initiated plan comes closer to "atonement" than mitigation. In fact, it provides no real mitigation. For that reason, it could be construed to conflict with the already adopted SEPA MDNS (that was not appealed by anyone) because it substitutes a vague promise for real mitigation. That same flaw cannot be applied to the two other alternatives recommended by the Department (see recommended Conditions No. 8.C(1) and 8.C(2) of Exhibit No. 19, below), because they do not diminish the MDNS conditions.
2. The second drainage alternative offered by the Department (8.C[2]) must be rejected also. It appears to say, in effect, that it is acceptable to worsen flooding on the Nirschl property if the Heiman property is protected from further worsening.
3. The Applicant argues that the RCW.17.110 standard which requires "appropriate provision" for drainage is, by definition, satisfied because the conditions preliminarily recommended by DDES comply with the 1990 Surface Water Management Design Manual. Perhaps, however, "adequate provision" demands more than merely complying with minimum standards. It is concluded here that, given the preponderance of evidence in this case, the 1990 SWM Design Manual does not make appropriate provision for drainage ways. If the 1990 Surface Water Management Design Manual does not make "appropriate provision," then the project should be denied unless another solution is found. The 1998 SWM Design Manual provides at least a better solution. RCW 58.17.110(2) provides, in part:

A proposed subdivision and dedication shall not be approved unless the. . .county legislative body makes written findings that...appropriate provisions are made for the public health, safety, and general welfare and for...drainageways....

RCW 58.17.110(2)(b) requires also that "the public use and interest" must be served by the platting of a subdivision and dedication.
4. Whether the application is vested to 1990 Surface Water Management Design Manual standards is open to question. Certainly, the lives of regulators and applicants are made easier when one makes that assumption. Indeed, that is the assumption that many regulators and applicants' representatives have made since the adoption of RCW 58.17.033. However, to adopt that assumption, one must make the leap that a *drainage* control and mitigation ordinance is a "land use control ordinance." That leap is not provided by RCW 58.17.033 and is not provided by any case law of which I am aware.
5. In the public review of a development application (such as the instant one) the burden of proof is borne by the Applicant. Ping pong balls that "don't go anywhere" do not successfully carry that burden. Such evidence must be weighed in comparison with the preponderance of the evidence that strongly suggests that sometimes an interbasin transfer occurs.

6. An Applicant-initiated "regional solution" would be wholly unacceptable because RCW 43.21C.060 makes clear that the Applicant cannot be required to do what the Applicant cannot do. In such a case, presumably, if that were the only solution, denial would be more defensible than imposing extraordinarily unacceptable conditions upon the Applicant.
7. The Applicant's argument that the incremental increase to Auburn Valley flood water will be paper thin disregards the County's statutory obligation to examine cumulative impacts. The evidence in this hearing record is incontrovertible that a series of developments implemented pursuant to the 1990 Surface Water Design Manual or earlier manuals has resulted in unacceptable flooding conditions. As noted by Heiman and Nirschl, their homes and agricultural structures are several decades old and they have not experienced flooding problems of the present magnitude throughout their construction life. Rather, the increased flooding, ponding of corrals, and floods streaming through an existing legal dwelling unit is a relatively new experience for these property owners that has chronologically coincided with the housing development upon the hill above. This Applicant should not be held responsible for the damage done by others. In fact, by law, the Applicant is *not* thus responsible. However, the law makes clear also that the Applicant may not worsen the problem--particularly when it is a problem of increasing *cumulative* impact, regardless of however slight the incremental changes may be.
8. For the reasons indicated in Conclusions 1 through 7, preceding, only the first subparagraph of Recommended Condition No. 8.C, as proposed by DDES (Exhibit No. 41), is added to the Examiner's recommendation below. In the absence of that added provision, the proposed plat of Alpine Meadows should be denied for failure to provide "appropriate provision" for drainage ways in the interest of public health and wellbeing. This additional condition--Revised Conditions No. 8--will not remove the flooding now experienced by Nirschl and Heiman. However, it will most assuredly preclude further damage and will, hopefully provide guidance for future development in this vicinity.

The drainage impacts upon these downstream properties must be taken seriously. If subdivision and drainage management law is actually intended to allow such downstream impacts to continue to worsen plat by plat, increment by increment, then there is something terribly, terribly flawed in the regulatory scheme. For the reasons indicated in Conclusions No. 1-7, above, however, no such flaw is assumed here. Rather, it is concluded that when properly applied, the system of applicable laws--most particularly RCW 58.17.110, which sets a *minimum acceptable threshold* regardless of all other applicable provisions, provides the necessary protection to other citizens and property owners.

8. Based upon the whole record, and according substantial weight to the determination of environmental significance made by the Land Use Services Division, it is concluded that approval of this subdivision as recommended below would not constitute a major action significantly affecting the quality of the environment. All evidence of environmental impact relating to the proposed action and reasonable alternatives to the proposed action have been included in the review and consideration of this action.
9. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.

10. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for drainage ways, streets, other public ways, water supply, and sanitary wastes; and it will serve the public use and interest.
11. The conditions recommended in the Land Use Services Division's Preliminary Report as amended below are in the public interest and are reasonable requirements.
12. Any portion of Finding Nos. 1 through 11, above, which may be construed as a conclusion is incorporated here by reference.

RECOMMENDATION:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication, which include the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and/or minimum density requirements of the R-4 zone classification. All of the lots shall meet the minimum dimensional requirements of the R-4 classification and shall be generally as shown on the face of the approved preliminary plat. (Except that minor revisions to the plat that to no result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.)
4. The Applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The Applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review. The following conditions represent portions of the Code. Requirements shall apply to all plats.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.

- b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineer plans.
- c. The following notes shall be shown on the final recorded plat:

"All building downspouts, footing drains and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings #_____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application for any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

- 8. The following conditions specifically address drainage issues for this particular plat:

- a. The following have been established by SEPA as necessary requirements to mitigate the adverse environmental impacts of this development. The Applicants shall demonstrate compliance with these items prior to final approval:

WATER RESOURCES (King County Comprehensive Plan NE-301, NE-302). The existing drainage on-site, sheet flows northerly into the Class 2 wetland and Class 3 stream on-site. The wetland and stream then flow in a northerly and easterly direction and eventually cross under 59th Avenue South into a culvert. The flow then traverses two home sites via a channel, then continues northerly through a steep ravine and down into the Green River approximately 3 miles from the site.

The downstream drainage course contains existing erosion and capacity problems. The restrictive drainage release rate included in the following SEPA conditions is contained in the MDNS. They are retained here for reference purposes only. They were not appealed and therefore remain intact. They do not control, however, because they are exceeded by the RCW 58.17.110-based Condition 8.C, below.

The drainage facility shall be designed using the King County Runoff Time Series (KCRTS) program such that the post-development flow duration shall not exceed the pre-development flow duration for all discharge between one-half of the 2-year flow and the 50-year flow. A 10% to 20% volumetric safety factor shall be added based on the design engineer's decision. The factor of safety shall not be less than 10%.

Alternatively, the facility shall be designed using the SCS-SBUH, 24-hour Storm Method described in the 1990 King County Surface Water Design Manual such that post-development 2-year, 10-year, and 100-year storm flows do not exceed pre-development storm flows equaling one-half of the 2-year, 2-year, and 10-year flows, respectively. A 30% volumetric safety factor shall be added to facilities meeting these criteria.

- b. Per 1998 King County Surface Water Design Manual (Section 1.2.3), all runoff control facilities, including bio-filtration, shall be located in a separate tract.
 - c. In order to make appropriate provision for surface water management, the detention facility for the site shall be designed using the Level 3 KCRTS methodology as described in the 1998 King County Surface Water Design Manual.
9. The following road improvements are required for the subdivision to be constructed according to the 1993 King County Road Standards.
- a. 56th Avenue South and South 295th Street shall be improved to the urban minor access standard.
 - b. South 296th Street shall be improved to the urban collected arterial standard and in accordance with the approved KCRS variance (L97V0153).
 - c. Tract B shall be designed as a private joint use driveway tract per KCRS 3.01C.(3a). The affected lots (9 & 10) shall be responsible for the ownership and maintenance of this tract. A note to this effect shall be shown on the engineering plans and final plat.
 - d. A separate tract (minimum 10 feet in width) for a pedestrian walkway shall be provided between the cul de sac and South 295th Street. This may result in the reconfiguration and/or loss of lots. This walkway shall be owned and maintained by the Homeowners' Association, with an easement granted to the public. A note to this effect shall be shown on the engineering plans and final plat.
 - e. Modifications to the above conditions may be made in conformance with the variance provisions of the 1993 King County Road Standards.
10. All utilities within proposed rights of way must be included within a franchise approved by the King County Council prior to final plat recording.
11. The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The Applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

13. Ten feet of additional right of way for South 2906th Street shall be dedicated along the Southern property line, allowing for 30 feet of right of way from centerline.
14. Any planter island within a turnaround bulb shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.
15. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation tract, driveway tracts and pedestrian tract.
16. Preliminary plat review has identified the following issues, which apply to Sensitive Areas Tract "C" of this project. In addition, the Applicant shall address any other requirements applicable to sensitive areas.
 - a. Wetlands/Streams
 - 1) The Class 2 Wetland shall have a buffer width of 50 feet, measured from the wetland edge. Buffer averaging may be employed, so long as the total amount of the buffer area onsite is not reduced and better resource protection is achieved.
 - 2) A minimum building setback line of 15 feet shall be required from the edge of the SAT.
 - 3) Prior to commencing construction activities on the site, the Applicant shall mark sensitive area tracts in a highly visible manner, and these areas must remain so marked until all development proposal activities in the vicinity of the sensitive areas are completed.
 - 4) The proposed subdivision shall comply with the Sensitive Areas Ordinance as outlined in KCC 21A.24. Permanent survey marking and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
17. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND
SENSITIVE AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave

undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

18. The Applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in KCC 21A.06.415). A DDES geologist shall approve the delineation of such areas. The requirements found in KCC 21A.24.110 concerning erosion hazard areas that shall be met, including seasonal restrictions on clearing and grading activities.
19. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sports court, children's play equipment, picnic tables, benches, etc.)
 - a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.
 - b. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
20. Street trees shall be provided as follows:
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along South 296th Street. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right of way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right of way.

- c. If King County determines that the required street trees should not be located within the right of way, they shall be located no more than 20 feet from the street right of way line.
- d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners' association or other workable organization unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES if located within the right of way. The species shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or overhead utility lines.
- f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
- g. The Applicant shall contact Metro Service Planning at (206) 684-1622 to determine if South 296th Street is on a bus route. If South 296th is a bus route, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

ORDERED this 9th day of April, 1999.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 9th day of April, 1999, to the parties and interested persons listed on the attachment.

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before April 23, 1999**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before April 30, 1999**. Appeal statements may refer only to

facts contained in the hearing record; new facts may not be presented on appeal. Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE DECEMBER 3, 1998, AND FEBRUARY 26, 1999, PUBLIC HEARING ON
DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L97P0024 -
PRELIMINARY PLAT OF ALPINE MEADOWS.

R. S. Titus was the Hearing Examiner in this matter. Participating in the proceeding were Lori Hoover, Bruce Whittaker, Kim Claussen, Rich Hudson, and Steve Foley, representing the County; Erich O. Tietze, Steve Jones, Mara Heiman, Stephan O. Fjelstad, Grace Balut Ostrom, Tom Nirschl, Mel Sorensen, Harold Laduke, Jim Hudson, Roseanna Donley and Greg Blount.

The following exhibits were offered and entered into the record **December 3, 1998**:

- Exhibit No. 1 Department of Development and Environmental Services File No. L97P0024
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report to the Hearing Examiner for the December 3, 1998 public hearing
- Exhibit No. 3 Application dated June 5, 1997
- Exhibit No. 4 Environmental Checklist dated June 6, 1997
- Exhibit No. 5 Re-issued Mitigated Declaration of Non-Significance dated October 16, 1998
- Exhibit No. 6 Affidavit of Posting indicating October 30, 1998 as date of posting and November 2, 1998 as date affidavit was received by DDES
- Exhibit No. 7 Plat map dated August 21, 1998
- Exhibit No. 8 Land use map 705W / 705E / 628W / 628E
- Exhibit No. 9 Assessor's maps W 1/2 02-12-14
- Exhibit No. 10 Level 1 Analysis by Erich O. Tietze & Associates, dated June 6, 1997 and attached Supplement dated April 7, 1998
- Exhibit No. 11 Wetland Report by Parametrix, In., dated July 14, 1995
- Exhibit No. 12 Schematic housing footprints by Driscoll Architects dated August 18, 1998
- Exhibit No. 13 Conceptual Storm Drainage Plan dated August 21, 1998
- Exhibit No. 14 Road Variance Decision (L97V01531) dated March 2, 1998
- Exhibit No. 15 Letter dated July 10, 1997 from Department of Natural Resources regarding area drainage problems
- Exhibit No. 16 Letters dated October 22, 1998 from King County Water & Land Resources Division and October 1, 1998 from King County Property Services Division, regarding an access easement over a portion of Park Crest East Retention / Detention Facility for the purpose of public right-of-way

- Exhibit No. 17 Letter received November 6, 1998 from Mara Heiman, who resides downstream of project
- Exhibit No. 18 Letter received November 6, 1998 from Darlene Locken, President of the Logandale Water Association (owner of adjacent parcel)
- Exhibit No. 19 Additional recommended conditions of approval dated November 30, 1998
- Exhibit No. 20 Letter from Northwest Hydraulic Consultants dated June 23, 1997, to Stafford Smith
- Exhibit No. 21 Hearing Examiner's Report for Eastview Terrace dated September 11, 1997
- Exhibit No. 22 Video presented by Mara Heiman, showing flooding problems on South 287th Street, November, 1998
- Exhibit No. 23 Panorama photo view of flooding on South 287th Street, Spring 1997
- Exhibit No. 24 Aerial photos entered by applicant:
 - A Color aerial photo dated September 9, 1998
 - B Eight historical photos of basin, each dated
 - C Four US Army Corps of Engineers aerial photos of basin, taken 1987
- Exhibit No. 25 Letter to Hearing Examiner dated December 3, 1989, from Mara Heiman
- Exhibit No. 26 Packet of nine letters regarding flooding concerns, neighboring property owners and government agencies
- Exhibit No. 27 Vicinity topography map prepared by Triad Associates, annotated by DDES and others
- Exhibit No. 28 Photo showing Tributary 0045 overflowing its banks, taken November 26, 1998, by Mara Heiman
- Exhibit No. 29 Letter from Federal Way School District, April 21, 1998

The following exhibits were offered and entered into the hearing record **February 26, 1999**:

- Exhibit No. 30 Letter from City of Auburn dated December 17, 1998
- Exhibit No. 31 Letter from King County Water & Land Resources Division dated February 9, 1999
- Exhibit No. 32 Graphic depiction of reduced runoff rate from Alpine Meadows site development
- Exhibit No. 33 Graphic depiction showing Alpine Meadows has minimal impact on Basin 0045
- Exhibit No. 34 Graphic depiction showing worst case impact on Heiman property
- Exhibit No. 35 Map of drainage basin showing stream channels and flow directions
- Exhibit No. 36 Backwater analysis of Tributary 0045 by Tietze & Associates
- Exhibit No. 37 Plan and cross-sections of Basin 0045
- Exhibit No. 38 Analysis of run-off characteristics for Alpine Meadows, by Tietze & Associates, February 19, 1999
- Exhibit No. 39 Applicant Goodman's Hearing Memorandum
- Exhibit No. 40 Pages 1-21 through 1-26 of 1998 King County Surface Water Design Manual
- Exhibit No. 41 DDES Staff's proposed amended condition 8c

- Exhibit No. 42 Letter dated June 18, 1997, from Seattle-King County Health Department to Thomas Nirschl
- Exhibit No. 43 Video and notes taken by Mara Heiman, December 28, 1998
- Exhibit No. 44 Four (4) photos of fallen tree, February 6, 1999, south of 287th Street, taken by Mara Heiman

